



## Department of Energy

Washington, DC 20585

December 8, 2004

### MEMORANDUM FOR DISTRIBUTION

FROM: RICHARD H. HOPF, DIRECTOR  
OFFICE OF PROCUREMENT  
AND ASSISTANCE MANAGEMENT

A handwritten signature in black ink, appearing to read "RH Hopf", is written over the name "RICHARD H. HOPF" in the "FROM:" line.

SUBJECT: Undue Influence Over the Procurement Process

Recently there have been many changes to organizational structures within the Department. One of the more significant organizational trends is that Headquarters Program Offices and field organizations have been restructured to incorporate acquisition functions within their direct line of authority. While this structure has the potential for certain improvements in the flow of authorities and managerial accountability, it also has the potential for certain problems, including the execution of undue or inappropriate influence on the professional conduct of contracting personnel by uninformed officials. Accordingly, program office personnel are cautioned that their interaction with contracting personnel should be conducted with a good understanding of basic policies governing Federal procurement and a respect for the role acquisition personnel play in ensuring compliance with applicable laws, regulations, and ethical standards as well as the conduct of sound business practices. A newly released Department of Labor (DOL), Office of Inspector General (OIG), audit report dated October 29, 2004, gives a good example of the consequences of not doing so.

Program staff of the Mine Safety and Health Administration (MSHA), an office within the DOL, were found to have influenced the circumventing of regulations to procure needed items, which resulted in the Government not receiving the best value on goods purchased, causing among other things excessive unauthorized commitments. The OIG report concluded that "... program staff exerted undue influence over the procurement process." As a result, the report recommends that the Secretary of Labor direct the relationship between the program office and the procurement authority be severed to ensure a completely independent procurement process. The full report can be viewed at <http://www.oig.dol.gov/public/reports/oa/2005/25-05-001-06-001.pdf>.

As evidenced above, there are inherent risks in commingling procurement and program staff under one authority. Program office personnel should be aware of this and guard against procurement failures or the appearance of such failures. Contracting officers must follow a defined set of policies and procedures in order to safeguard the public trust and these responsibilities must be respected and supported by program personnel.

To assist in ensuring that program staff understand the role of the contracting officer and the basic requirements of the Federal procurement systems, we urge you to ensure that program managers and other personnel who interface with the contracting function



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review Federal Acquisition Regulation (FAR) (48 CFR 1.6) which discusses contracting authority and responsibilities. In addition, my office has developed the relevant guidance listed below which should be periodically reviewed:

- Acquisition Guide Chapter 3—Improper Business Practices;
- Acquisition Guide Chapter 5—Publicizing Contract Actions;
- Acquisition Guide Chapter 6—Competition Requirements;
- Acquisition Guide Chapter 9—Contracting Qualifications;
- Acquisition Guide Chapter 15—Contracting by Negotiation;
- Acquisition Guide Chapter 7.1—Acquisition Planning
- Acquisition Letter 2000-09, Source Selection Authority;
- “Procurement Integrity” Brochure, dated March 2003.

Also use the following link to access additional acquisition guidance  
<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Regulations+and+Guidance?OpenDocument>

If there are questions concerning this subject, please contact Ms. Denise Wright, of my staff, at (202) 287-1340.

cc:

Bruce Carnes, Chief Acquisition Officer  
Rosita Parks, Chief Information Officer  
Susan Grant, Chief Financial Officer

## **HEADQUARTERS ELEMENTS:**

Assistant Secretary for Energy Efficiency and Renewable Energy  
Assistant Secretary for Environmental Management  
Assistant Secretary for Environment, Safety and Health  
Assistant Secretary for Fossil Energy  
Assistant Secretary for Congressional and Intergovernmental Affairs  
Assistant Secretary for Policy and International Affairs  
Administrator, Energy Information Administration  
Director, Office of Civilian Radioactive Waste Management  
Director, Office of Nuclear Energy, Science and Technology  
Director, Office of Science  
Director, Office of Legacy Management  
Director, Office of Counterintelligence  
Director, Office of Economic Impact and Diversity  
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Director, Office of Security and Safety Performance Assurance  
Director, Office of Electric Transmission & Distribution  
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Head of Contracting Activity/Golden Field Office  
Head of Contracting Activity/NETL  
Head of Contracting Activity/EM

cc:

Acting Under Secretary for Energy, Science and Environment  
General Counsel  
Senior Procurement Executive, NNSA  
DOE Procurement Directors (via e-mail)